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*Finding Solutions in a Complex World*

March 17, 2009

Great Lakes and the Environment Committee  
Appropriation Subcommittee on the Environment  
**State of Michigan**  
P.O. Box 30013  
Lansing, MI 48909

**Subject:** *Repeal of Michigan's Part 303 Wetland Protection Act*

Dear Committee Members:

As the co-owner of an environmental consulting business, I am concerned with your proposal to repeal Part 303 Wetlands Protection. We represent private citizens, developers, municipalities, transportation agencies, non-profit agencies, and MDOT and have first hand experience with both Part 303 and Part 404 regulations. Repealing Part 303 will have very negative consequences for economic development within the State and will result in lasting impact to Michigan's natural resources.

As you are aware, wetlands are some of Michigan's most critical natural resources, not only through the physical functions they provide (*i.e.*, flood storage, groundwater recharge, wildlife habitat, water quality improvements, etc.) but also by bringing Michigan millions of recreational dollars each year in the form of hunting, fishing, bird watching, and other passive recreational activities. The benefits that wetlands provide to Michigan's citizens, both obvious and unnoticed, are invaluable.

During the State of the State address on February 3, 2009, Governor Granholm recommended "*returning enforcement of wetlands protections to the federal government where more staff exists to effectively safeguard our natural resources*". Repealing Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act in an attempt to reduce the billion-dollar-plus State deficit by relying on the U.S. Army Corps of Engineers (ACOE) to administer wetland regulations under the Section 404 program is ill-conceived. Simply put, eliminating Part 303 single-handedly undoes almost 30 years of wetland protection in this state, and would be economically detrimental for a number of reasons:

- The permitting process would slow dramatically, further discouraging development that has already been severely damaged in this economy. Governor Granholm's statement suggesting that the ACOE has more staff than MDEQ to "*effectively safeguard our natural resources*" is false. The MDEQ has 10 offices in the state, including over 78 staff that work with wetlands; ACOE has 6 offices with 39 staff that cover all of Michigan and northern Indiana. Furthermore, most permits under Part 303 are issued within 60 days,



while the ACOE has no timeframe for review and it takes on average 120 days to issue a permit with individual permits taking as long as 600-700 days. As a consultant who drafts dozens of permit applications each year for clients and has personal experience in Ohio and Iowa, it is common for permits from the ACOE in these states to often take well over a year, often times because the ACOE requires a jurisdictional determination prior to the filing of a permit application. This time consuming, costly, and sometimes frustrating process has led to numerous clients “killing the project” altogether. The ACOE is simply too understaffed and not equipped to handle additional workloads - the ACOE currently receives roughly 1,500 permit applications per year, while the MDEQ handles over 3,000 applications per year. In addition, the ACOE has recently received new guidance on providing jurisdictional assessments as a result of the Rapanos Supreme Court decision. The new guidelines have produced confusion among ACOE staff and has complicated the entire process. Not only would the return of wetland enforcement to the ACOE be ill-advised, it would ultimately create additional responsibilities to an already overworked ACOE staff. To further complicate matters, your proposal will require many if not most applicants to receive two permits; one from the ACOE and one from MDEQ under Part 301 (Inland Lakes and Streams) and/or Part 31 (Water Resources Protection) should lakes, streams, or floodplains be involved. It should be noted that very few of our permit applications involve *just* wetlands.

- There is significant value to Michigan to have a state run program that allows for citizens, municipalities, State Representatives, State Senators, U.S. Congressman, U.S. Senators and the Governor's office to voice their opinion regarding pending permit applications. Having a state run program allows for projects that are important to Michigan and local communities to be politically “pushed” often resulting in timely review of projects. For example, Hemlock Semiconductor in Saginaw County, a regionally important project that invested over a billion dollars for multiple expansions, had three MDEQ permits issued within 50, 120, and 118 days in 2005, 2007, and 2008, respectively, for significant wetland impacts requiring over 38 acres of wetland mitigation. If these permits were being reviewed by the ACOE, it is likely that these projects would have required extensive reviews lasting longer than a year and may not have been approved. Other important projects such as the Pinnacle Horse Race Track in Wayne County had a permit issued within 117 days for a project with significant stream, floodplain, and wetland impacts. The Harbor Shores golf course and development project in Benton Harbor was deemed to be important to Michigan and through negotiations with MDEQ wetland impacts were reduced from 13.8 acres to 7.1 acres and a MDEQ permit was issued within 177 days. If any of these projects were reviewed by the ACOE they would have been delayed so long that they would have likely been abandoned. The ability to fast track projects is critically important to economic development within Michigan, particularly in light of the recent American Recovery and Reinvestment Act (ARRA). The ARRA has allocated approximately 2.3 billion dollars to Michigan and has very stringent timelines for expenditure of the funds. Many of the projects funded under this act still require MDEQ Part 303 permits, and permits will need to be issued in an expedited fashion. Our firm is currently preparing permits for three ARRA-funded projects with a total worth of over 38 million dollars. The MDEQ has been told to track all ARRA projects within Coastal and Inland Waters Permit Information System (CIWPIS) using ARRA in the Project Name to ensure timely reviews and permit issuance. If Part 303 is repealed, Michigan will have no



ability to “push” high priority projects and it is likely that many important Michigan projects will be delayed or stopped and Michigan would certainly be losing hundreds of millions of dollars in ARRA funding. Michigan is also in the unique position of receiving additional ARRA funding based on the fact that many other States have said they will be unable to utilize ARRA funding due to the inability to obtain permits in a timely fashion.

- The federal Section 404 program does not provide protection for isolated wetlands as Part 303 does; therefore, isolated wetlands regardless of size would no longer be regulated. According to Governor Granholm’s Office and the MDEQ, 930,856 acres or 17 percent of the wetlands in Michigan, are not physically connected to lakes or streams and would not be regulated by the ACOE. These isolated wetlands in particular are vital in controlling flooding in highly developed areas, as well as significantly reducing the rates of pollution and runoff entering our lakes and streams. In Bloomfield Township for example, in which wetlands were recently inventoried by Niswander Environmental, 113 of the Township’s 214 (53%) wetlands are isolated. Providing no protection for these features in an area as densely populated as Bloomfield Township (like many others in Michigan) is cause for great concern, especially considering the number of lakes and streams in the state that are prone to flooding on a regular basis due to the existing wetland losses. This is already being experienced in areas that have seen losses of many small, isolated wetlands to development. Repealing Part 303 would likely exacerbate this problem through the loss of even more wetlands.
- Upon realizing the potentially severe economic effects that flooding will have as the result of impacting unregulated isolated wetlands, communities will be burdened with protecting these wetlands either through the adoption of local ordinances or the development of expensive regional stormwater practices. In these economic times, most of these governments do not have the time or funds to deal with this issue. A real estate appraiser from MDOT recently stated that natural wetlands provide approximately \$15,000 per acre worth of stormwater storage. Conversely, a conservative estimate to create or restore wetland is \$50,000 - \$100,000 per acre. These costly stormwater management techniques will become absolutely necessary should isolated wetlands become de-regulated by your proposed plan.
- Under the current wetland regulatory format, the Michigan Department of Transportation and other local transportation agencies have a Memorandum of Understanding (MOU) that allows for streamlined permitting process with the MDEQ. As part of the MOU, MDOT provides over one million dollars to MDEQ to fund staff positions that only review transportation projects. If Part 303 is repealed, MDOT has stated that it will withdraw this funding. The MOU also allows for consolidated wetland mitigation for minor projects. The Road Commission for Oakland County, Washtenaw County Road Commission, and Macomb County Road Commission have all developed consolidated wetland mitigation sites that will not be usable if Part 303 is returned to the ACOE. Eliminating Part 303 would also force these agencies to submit permit applications to both the MDEQ and the ACOE, leading to costly delays in the infrastructure projects that are needed to stimulate the economy.



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We strongly urge you to consider the ramifications of repealing Part 303. Simply handing wetland protection to the ACOE would not only impair our already fragile natural resources, but also contribute to additional economic burdens that this State already faces. In Governor Granholm's letter to Michigan Citizens dated January 6, 2003, the Governor wrote of the value of wetlands, the importance of citizen involvement in wetland protection, and the responsibility to ourselves to act as stewards for Michigan's land and water. The Governor stated that "*sound wetland protection is important to our economy, our quality of life, and our future*". Please carefully consider the proposed plan to eliminate Part 303 Wetlands Protection. Michigan would be the only state in the Great Lakes region that would not protect wetlands at a state level. All other states in this region at least provide some additional wetland protection through Section 401 Water Quality Certification under the Clean Water Act. De-regulating these critical isolated wetlands will have dire economic, environmental, social, and political impacts that Michigan cannot adequately handle at this time, or in the future.

Respectfully,

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*Co-Owner, Niswander Environmental LLC*